

**ENTERED**

December 14, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

CLAUDIA LIZETT GARZA,  
Plaintiff,

v.

REX TILLERSON, Secretary of State,  
et al.,  
Defendants.

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Case No. 1:17cv132

**MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

The Court is in receipt of Defendants' Partial Motion to Dismiss (hereinafter, Defendants' "Motion" or "Motion to Dismiss"). Dkt. No. 7. Defendants' Motion was filed on August 31, 2017. *Id.* Plaintiff has not filed a response. Defendants' Motion should be granted because: (1) this Court lacks the subject matter jurisdiction to review Plaintiff's claim under the Administrative Procedure Act ("APA"); and, (2) the United States is not a proper party to this lawsuit.

Plaintiff's Complaint for Declaratory and Injunctive Relief asserts two claims which were also asserted by the plaintiff in *Gutierrez v. Tillerson, et al.*, No. 17-cv-111, 2017 WL 6044108 (S.D. Tex. Nov. 15, 2017), *adopted*, 2017 WL 6054941 (S.D. Tex. Dec. 6, 2017). *Compare* Dkt. No. 1 at p. 2, ¶ 5 and pgs. 12-13, *with Gutierrez v. Tillerson*, Dkt. No. 1 at p. 2, ¶ 5 and pgs. 10-11. In *Gutierrez*, the Court found that both claims were subject to dismissal. *Gutierrez*, 2017 WL 6044108, at \*6-8. The

Court found Gutierrez's claim against the United States was subject to dismissal because the United States is not a proper party in a suit filed under 8 U.S.C. § 1503(a). *Id.* at 7-8. More specifically, because the plain language of § 1503 does not authorize actions against the United States, the Court found that it lacked subject matter jurisdiction to hear Gutierrez's claim against the United States. *Id.* Additionally, the Court found that it lacked subject matter jurisdiction over Gutierrez's claim for relief under the APA. *Id.* at 7 (noting that Gutierrez's APA claim was precluded by the existence of an adequate remedy available to her under § 1503(a)).

Plaintiff in the instant case provides no facts or authority to distinguish her claims from those brought by Gutierrez, and nothing is present here to command a different result from the result reached in *Gutierrez*. Accordingly, for the reasons provided by the Court in *Gutierrez*, which this Court incorporates here by reference, it is recommended that the Court **GRANT** Defendants' Motion to Dismiss. Dkt. No. 7.

### **Notice to Parties**

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court,

provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996).

Signed on this 14th day of December, 2017.

A handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke and a vertical stroke, with the letters 'IA' visible in the center.

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**Ignacio Torteya, III**  
**United States Magistrate Judge**